

REMARKS

Applicants have carefully reviewed the arguments presented in the Office Action and respectfully request entry of the amendment and reconsideration of the claims.

Claim 2 has been canceled and claims 20-23 have been withdrawn. Claims 1 and 3-19 have been amended. Thus, claims 1 and 3-19 are pending in the application.

The title of the specification was amended to make it more descriptive as requested by the Examiner. Moreover, the specification was amended as listed above to correct various typographical errors.

Claims 5-19 were objected to under 37 CFR 1.75(c) as being in improper form due to improper multiple dependencies. Claims 5-19 were amended to correct the improper dependencies; thus Applicants believe that these objections are now moot and ask that they be withdrawn.

Claims 1 and 3-19 were also rejected under 35 U.S.C. 112, second paragraph as being indefinite. All claims were reviewed and amended as needed to correct informalities and to clearly recite the subject matter claims. Applicants thus believe that the claims are now in a form for allowance.

Claims 1-4 were rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 3,915,806 issued to Horlach. The office action also appears to reject these claims under US Patent No. 4,963,325 issued to Lennon; the response assumes this is what was intended, and so responds accordingly. Applicants traverse these rejections.

Horlach teaches a specimen holding kit wherein a swab that has been exposed to sample environment can be thrust into a well that contains a medium. This is completely unlike the device claimed in amended claim 1. Applicants' claim 1 recites a test material disposed between a first substrate and a second substrate, with the test material containing a predetermined amount of at least one analyte such that a swab thrust between the first and second substrates contacts the test material allowing transfer of a portion of the test analyte to the swab. Thus, the test material

contained in the device is used as a source of analyte which is then transferred to the swab. The swab may then be analyzed to determine how much of the analyte was transferred to the swab, which is a measure of the efficiency of the operator's swab technique. In Horlach, the medium in the holding kit is not a test material, rather it is storage medium for transporting the swab and any material sampled by the swab.

Lennon discloses a device similar to Horlach's. Lennox discloses a disposable device suitable for conducting diagnostic procedures using specimens gathered in the absorbent tip of a swab. The device includes a well full of capture media and is configured such that the tip of the swab is squeezed and any test material is expressed from the swab and brought into contact with the capture element. As described above, this is completely different from Applicants' invention of claim 1, wherein the device contains a test material having an analyte that is sampled by thrusting a swab between the first and second substrates.

Moreover, even if Horlach and Lennon, or any of the other references of record, are combined, one skilled in the art would still not obtain the novel arrangement of elements claimed by Applicants' amended claim 1.

Accordingly, since neither Horlach nor Lennon teach, or even suggest, alone or in combination, a test material disposed between a first substrate and a second substrate, with the test material containing a predetermined amount of at least one analyte such that a swab thrust between the first and second substrates contacts the test material allowing transfer of a portion of the test analyte to the swab, Applicants respectfully submit that amended claim 1 is novel and not obvious in view of either reference. Accordingly, Applicants request that the rejections be withdrawn, and amended claim 1, and the claims dependent therefrom, be allowed.

CONCLUSION

Applicants respectfully request entry of the amendment and reconsideration of the pending claims. Should the Examiner have any questions concerning the foregoing, Applicant requests that the Examiner contact Applicants attorney, John Fitzgerald, at 310-242-2667.

It is believed that no fees are due with this communication. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 06-2425.

Date: June 19, 2007

Respectfully submitted,

FULWIDER PATTON LLP

By: /john k. fitzgerald/

John K. Fitzgerald, Registration No. 38,881

JKF:mmm
Howard Hughes Center
6060 Center Drive, Tenth Floor
Los Angeles, CA 90045
Telephone: (310) 824-5555
Facsimile: (310) 824-9696
Customer No. 24201
159528.1